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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

ALAMEDA PRODUCE MARKET, INC.,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES,

Defendant and Respondent;

LOS ANGELES WHOLESALE
PRODUCE MARKET,

Intervener and Respondent.

B173972

(Los Angeles County
Super. Ct. No. BC297946)

APPEAL from a judgment of the Superior Court of Los Angeles County,
J. Stephen Czuleger, Judge. Affirmed.

Michael A. Abramson for Plaintiff and Appellant.

Rockard J. Delgadillo, City Attorney, Susan D. Pfann, Assistant City
Attorney, and Mary K. Dennis, Deputy City Attorney, for Defendant and
Respondent.

Latham & Watkins, James L. Arnone, Damon P. Mamalakis, and
Stephanie E. Ord for Intervener and Respondent.

INTRODUCTION

Plaintiff Alameda Produce Market (APM) appeals from a judgment entered in favor of defendant the City of Los Angeles (the City), by which the trial court found the City committed no abuse of discretion in conducting a private sale of City-owned property to the Los Angeles Wholesale Produce Market (LAWPM), intervener. APM contends that the City failed to comply with the Los Angeles Administrative Code and abused its discretion by failing to conduct a public auction of the property, by failing to determine the fair market value of the property before determining to conduct a private sale, and by failing to ensure that the property would be used for wholesale produce market purposes. We disagree and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Development of the Property

During the 1970's, the Los Angeles Community Redevelopment Agency (CRA) entered into an agreement with the City and intervener LAWPM to establish a permanent wholesale produce market in downtown Los Angeles. The primary objective as stated in the revitalization program summary was "to create a modern, unified produce facility within the City of Los Angeles to meet the food needs of 14 million Southern California residents and to maintain 2,500 primary and 3,000 secondary jobs and create 500 new direct and 600 new indirect jobs."

In 1982, the City entered into a development agreement with the CRA and LAWPM, which provided for the acquisition and construction of an integrated wholesale produce facility on a 19.41 acre parcel of property on East Olympic Boulevard. The 1982 development agreement provided that the conveyance of the property was subject to a lease between the City as lessor and LAWPM as lessee for the development and maintenance of the produce market.

Section VII.A (701) of the 1982 development agreement contains a covenant by which LAWPM agreed to use the property for the uses specified in the applicable redevelopment plan, the grant deed, the lease, the scope of development and the approved site plans. In view of the lease's restrictions, discussed below, and the goal of the redevelopment plan, the City interpreted that section to covenant that LAWPM must use the property for wholesale produce market uses. Section VII.D (704) of the 1982 development agreement states that "the covenants contained in this Amended Agreement and the Grant Deed shall remain in effect until July 18, 2010."

In 1983, the City as lessor and LAWPM as lessee entered into a long-term lease, extending through the year 2048. The rental payment was below market rate. The lease provides that "Lessee shall use the Site or cause the Site to be used for the purpose of diligently proceeding with the construction of new industrial warehousing, terminal distribution, and parking facilities as a wholesale produce market in accordance with the Development Agreement, and other facilities which are incidental thereto and compatible therewith (the 'Produce Market') and operating and maintaining the Produce Market thereafter. . . . The Warehouse Space of the Produce Market shall be subleased by Developer to tenants for use in the wholesale produce business of receiving, storing, distributing, and/or selling fruit, nuts, vegetables, or related products and other uses incidental to such wholesale produce business and compatible therewith (the 'Produce Use')."

The lease also allows for nonproduce market uses, though the lessee agrees to use its best efforts to maximize use as a produce facility. If the lessee demonstrates to the reasonable satisfaction of the City that the produce use is infeasible as the primary use for the site, the lessee has the right to use the site or any portion thereof for any purpose, subject to certain limitations and consequences. Specifically, the lessor would pay additional rent according to the amount of nonproduce use. “In the event that the primary use of the Site changes from the Produce Use to a New Use . . . , Lessor shall have the right to cause an appraisal (‘Lessor’s Appraisal’) to be made, at Lessor’s sole expense, to determine the fair market rental value of the Site, as of the date of Lessor’s Appraisal. The appraisal of fair market rental value shall determine the amount of the annual rent and the frequency, and the amount or basis, of any rent adjustments over the remaining term of this Lease, excluding the value of any then existing improvements (the ‘Fair Market Rental Value’).”

Thus, in combination the lease and the 1982 development agreement gave the City the power to compel LAWPM to maintain the use of the property as a produce market. The City believed, however, that absent LAWPM’s consent to a further use restriction, the City would not be able to restrict the use of the property past 2010, although disincentives for nonproduce use would remain in effect.

From 1983-1986, the City paid \$29 million to purchase and develop the property. LAWPM’s owners personally guaranteed a \$21 million construction loan to build the produce market facility. In addition, LAWPM has spent \$30 million on improvements to the facility.

To date, the CRA’s funding has been repaid, and the facility employs over 5,000 workers, most of whom have high-paying union jobs. The facility is now a \$2 billion per year operation. LAWPM also operates a charitable distribution facility that provides one million pounds of produce per month to numerous

charities. LAWPM intends to remain in the produce business and to make further improvements to the property.

Appraisals

In 1998, the City began to explore selling the property. The City hired Mason & Mason to appraise the value of the property and of the City's fee interest, taking into account the long-term lease since any third-party purchaser of the property would acquire it subject to LAWPM's lease, which lasts until 2048. Mason & Mason determined that the fair market value of the City's salable property interest, its "leased fee interest," was \$9,867,000 as of December 1998. Mason & Mason provided an updated appraisal in April 2001 that appraised the City's leased fee interest to be \$11,293,000.¹

In January 2002, the City Council determined that the property would be sold, and directed the Department of General Services and the City Administrative Officer to update the appraisal. The City hired Thomas M. Pike & Associates to do so. This third appraisal indicated the fair market value of the leased fee interest was \$14,370,000 as of April 1, 2002.

¹ An independent analysis by Keyser Marston Associates, discussed below, explained as follows: "Since a ground lease encumbers this land, the underlying land value is divided between the leased fee interest--the interest of the Lessor (City of Los Angeles)--and the leasehold interest--the interest of the Lessee ([LAWPM])." "The Lessor's saleable interest is also known as the leased fee interest. This interest is equal to the present value of the lease revenue over the remaining term of the lease, plus the present value of land after the lease terminates. The Mason & Mason appraisal values the leased fee interest at \$11,283,000. KMA reviewed the appraiser's discounted cash flow analysis for the projected income stream and the reversionary interest and found the estimate to be consistent with the terms of the lease and the projected market growth rates."

LAWPM also submitted appraisals to the City. Prepared by C.B. Richard Ellis, those appraisals valued the City's leased fee interest at \$8.9 million initially, and later at \$10.3 million as of early 2003.

The record also contains a memorandum letter from the City's broker, Julien Studley, Inc., dated August 20, 2002, written in response to the City's request to review the appraisals in preparation for negotiations with LAWPM. The Studley firm opined that the property was worth between \$27.9 million and \$42 million, but this value represented what the property would be worth were it not encumbered by the lease. In addition, the valuation did not "consider[] the covenant restricting the use of the site as a wholesale produce market through the end of the lease (2048). The City can choose to eliminate that covenant should it create more value for the land." The letter further stated that "[b]ecause the buyer happens to be the Lessee, the issue of the under-market ground lease becomes moot: the lessee is the buyer of the land, therefore the lease will terminate." It further stated: "The ground lease is removed as of the sale, so the valuations presented in this memo are the appropriate ones." This was not an appraisal prepared pursuant to the Uniform Standards of Professional Appraisal Practice.

In addition, the City engaged Keyser Marston Associates (KMA) to perform an independent analysis of the potential benefits and burdens of the proposed sale, taking into account the public interest and necessity of selling the property. In its report, KMA concluded that because the lease gives LAWPM control of the property, there would be no advantage to third party ownership. A third party purchaser would have no incentive to make capital improvements because it would not obtain additional rent for doing so. "Such an investor would either be a passive landowner, or a speculator in the Property's long-term value." "If a third party buys the lease, it will not own the improvements. The ground lease payment[s] are unrelated to the economic activity at the Site; a third party would have no

economic incentive to invest in capital improvements. In contrast, the existing tenants, if situated as owner[s]/operators, would have a high economic incentive to make the kind of capital improvements that expand market productivity. [Fn. omitted.] Without capital improvements, the long-term viability of the Produce Market is threatened, and the City may be faced with the same obsolescence concerns that prompted its involvement in 1983.”

KMA concluded that LAWPM would be the party most motivated to make improvements if the lease were extended or if LAWPM obtained a fee interest. It further concluded: “To achieve its long run economic development goals, the City may consider a direct sale [to] be conditioned upon a right of the City to purchase the land if, a) there is a change in use, and/or b) upon a capital improvement plan by the Lessee.”

Analyses by Relevant City Departments

The Community Development Department (CDD) recommended in May 2001 that it was in the City’s best interest to sell the property to LAWPM. It noted that “[t]he City’s original economic development goal was to ensure that the wholesale food industry was permanently located in Central Los Angeles in order that the job base and associated activities ancillary to a robust produce trade center remain within the City[, and concluded] [t]o a large extent this goal has been achieved.” It also stated: “Under the current lease the City has no real control over the lease or other operation decisions of the tenants. The lease solely provides the Lessor with the ability to impose economic penalties upon a change of use at the site. If the site is used for non produce purposes, the lease requires that the rents be increased to fair market value. [¶] It is unlikely that the produce market would relocate from its current site. . . . However, in order to ensure the continuance of the long-term presence of the Wholesale Produce Market, the City

may want to condition its sale of the market on the inclusion of certain terms in the sale documents such as the retention of a reversionary interest or liquidated damages to ensure enforcement of those covenants and conditions, and the recordation of these covenants and conditions against the property to assure its continued use.”

Finally, the CDD concluded that a “sole source sale” to LAWPM (a private sale), as opposed to open public bidding, would best serve the public interest. The CDD noted that the property would be sold at a fair market value regardless of whether it were sold to the existing tenant or to a third party. The CDD determined, based on discussions with LAWPM, that the latter was “very interested in continuing to operate in substantially the same manner as they do now. They indicated a willingness to have their purchase of the land be subject to a long-term operating covenant and a right of first refusal for the City to repurchase the site if produce operations cease. They [c]ited several possible capital improvements they would consider undertaking, but only if they were owners of the land.”

On June 4, 2001, the Chief Legislative Analyst and the City Administrative Officer submitted a joint report on the proposed sale, noting that certain steps would need to be taken before the proposed sale could occur, and recommending that the relevant City departments be instructed to determine whether the property is no longer required for City use and whether the public interest or necessity require its sale, pursuant to article 4, section 7.22 et seq. of the Los Angeles Administrative Code. The report noted that a determination would need to be made whether the public interest or necessity require that the sale occur without notice of sale or advertisement for bids, pursuant to article 4, section 7.27 of the Los Angeles Administrative Code.

The City Attorney's Office submitted a report dated July 27, 2001, outlining the necessary procedures to be followed in selling the property. The report indicated that it would be appropriate for the City Council to take action to find that the public interest and necessity would support a private sale of the City's interest in the property. The City Attorney stated that "the City is able to sell its interests subject to the [applicable] legal considerations [L.A. Admin. Code, §§ 7.22 and 7.27, and Gov. Code, § 54220 et seq.], contractual conditions and restrictions placed on the use of the funds received."

The City Council's Economic Development and Employment Committee (EDEC) held a public meeting regarding the proposed sale on September 17, 2001. Representatives of various City departments testified. The City Council member representing the district in which the property is located also testified.

Thereafter, the EDEC submitted a report regarding the proposed sale in which it concluded that the property is no longer required for public use and should be considered surplus property. Further, the EDEC stated that the property should be sold to the current tenants rather than at public auction, and for the highest possible amount, considering the discounted appraised value of \$11.3 million to be the minimum starting point for negotiations. The EDEC advised the City Council to direct the Department of General Services to develop a proposed ordinance providing for the sale, which would include deed restrictions regarding the land's continued use as a regional produce market for an extended period of time. The EDEC noted that "[b]y selling the land to the current tenants with appropriate deed restrictions regarding the land's continued use as a produce market, the land's long-term intended use could be guaranteed." Continuing the lease beyond 2010 (when the absolute use restriction terminated pursuant to the terms of the lease) through 2048 could possibly result in the land being used for other than the City's intended purpose as a produce market.

The City Council's Information Technology and General Services Committee (ITGS) also held public hearings regarding the proposed sale, on November 14, 2001, and December 18, 2001. ITGS made similar recommendations to the City Council as did the EDEC regarding a sole source sale to LAWPM with deed restrictions on the land's use, and further recommended that an updated appraisal be acquired, and that the City Attorney prepare an ordinance "providing for the direct sale of said property for the fair market value, but not less than the most current appraised value."

On January 22, 2002, the City Council held a public hearing at which the City Council adopted the ITGS report and its recommendations. The City Council unanimously concluded that a direct sole source sale to LAWPM pursuant to Administrative Code section 7.27 would be in the City's best interests.

The Sale Terms

Extensive negotiations between the City and LAWPM ensued as to the price and the use restriction. Based on the appraisals and staff reports, the City and LAWPM eventually agreed on a price of \$18 million. (§ 3.a.) In addition, LAWPM agreed to a use restriction covenant through 2048. (§ 3.b.) providing that if the property ceases to be used as a produce market during the term of the covenant and the City agrees or an arbitrator determines that produce use is infeasible, the City would receive up to \$20 million in additional compensation (prorated from the date of purchase) based on an agreed-upon buy-out schedule. If produce use was determined to be feasible, LAWPM could cease such use but only upon payment to the City of a penalty, the difference between the fair market value of the property at that time and the \$18 million purchase price. (§ 3.c.) In addition, an instrument pursuant to Civil Code section 885.010 et seq. would be recorded against the property giving the City a power of termination as to

LAWPM's or its successors' fee simple estate in the event the use of the property changed without LAWPM or its successors first seeking City approval. (§ 3.d.)

After the City agencies reported to the City Council that an agreement as to the purchase price and terms had been reached, the City Council's ITGS committee held a public hearing on May 28, 2003. Richard Meruelo, president of APM, testified at this hearing, and submitted a letter on behalf of APM, objecting to the direct sale of the property to LAWPM. However, Meruelo did not address the issue of the existence of LAWPM's continuing lease, except to say that it was not relevant. Although Meruelo admitted he had known for years that the City was considering selling the property, this was the first time he had expressed to the City his objection to the sale. In addition, a Mr. Guerra, testifying as an advocate on behalf of Meruelo, made an oral offer to purchase the property for \$20 million, with the same conditions that LAWPM had agreed to accept.

A representative of the City explained: "Any sale to any other party, other than the tenants, would have that party, the buyer, stepping into the shoes of the City; they would be bound by the terms of that lease. They cannot unilaterally come in and change that contract without the consent of the tenants." In addition, the City representative noted that "[for] a third party to give us the same deal that is before you today, [it] would have to get the agreement of the tenants. . . . [T]here also has to be an agreement with the existing tenants that says that you, in essence, are not going to have a lease."

After hearing Meruelo's testimony and considering the letter submitted on behalf of APM, ITGS recommended that the City Council approve the sale of the property to LAWPM.

On June 3, 2003, another public hearing was held at which the City further considered APM's proposal to purchase the property, and considered the issue of whether a public auction should be held. Thereafter the City Council approved an

ordinance (ordinance number 175302) which directed the sale of the property to LAWPM. The ordinance became effective August 3, 2003. Escrow closed on the sale of the property on August 21, 2003.

The Present Action

APM filed a complaint on June 24, 2003, seeking a declaration that Los Angeles City Ordinance No. 175302 was invalid and constituted a waste of taxpayer funds, pursuant to Code of Civil Procedure section 526, subdivision (a). APM contended that the ordinance violated applicable provisions of the Los Angeles Administrative Code and article IV, section 31 of the California Constitution, and that its enactment constitutes an abuse of discretion.

LAWPM requested leave to intervene as a real party in interest and asked the trial court to treat the matter as a petition for writ of mandate. The trial court permitted LAWPM to intervene, but elected not to treat the matter as a writ of mandate.

Trial by the court was held on February 3, 2004. After hearing extensive argument by all parties, the trial court entered judgment in favor of the City. The court found that the City complied with Los Angeles Administrative Code section 7.27 in conducting the sole source sale, that the City did not violate section 7.22a in that it did not fail to determine the property's fair market value before deciding to sell the property to LAWPM, and the City did not abuse its discretion in determining that the public interest was served by the sale to LAWPM. Finally, the court rejected APM's contention that the ordinance fails to restrict the use of the property as a produce market.

This appeal followed.

DISCUSSION

APM contends that the City abused its discretion by purportedly failing to determine the fair market value of the property at issue and instead negotiating a private sale, rather than by selling it at public auction, subject to the existing leases and an enforceable use restriction.

In reviewing the actions of local agencies, courts are required to give substantial deference to those agencies. “It is settled that in reviewing the findings and order of a local, quasi-judicial administrative body, the trial court is confined to the evidence received by said body and, in reviewing that evidence, may not reweigh it, but may consider only whether there is any substantial competent and material evidence in the administrative record to sustain the findings and order attacked. [Citations.] The reviewing court may not consider evidence which was not presented to the local agency, and there can be no trial de novo with respect to matters upon which the agency was authorized to and did in fact decide.

[Citation.]” (*Dumas v. City of Sunnyvale* (1965) 231 Cal.App.2d 796, 800.)

“[W]here the object of a particular proceeding is to establish that a local board acted arbitrarily, capriciously or fraudulently, ‘there is no distinction between an action for an injunction in declaratory relief and mandamus or certiorari.’” (*Id.* at pp. 801-802.) In proceedings aimed at reviewing the propriety of the action of a local administrative board, “the reviewing court has no power to exercise an independent judgment on the facts. The superior court’s power of review in such cases is limited to determining whether there was substantial evidence before the board to support its decision. [Citations.] It is improper for the court to have a trial de novo or to make its own findings on the evidence. [Citation.]” (*Id.* at p. 801, quoting *Albonico v. Madera Irr. Dist.* (1960) 53 Cal.2d 735, 739.) We review the administrative record de novo and are not bound by the conclusions of

the trial court. (*Gentry v. City of Murrieta* (1996) 36 Cal.App.4th 1359, 1375-1376.)

In reviewing the evidence on appeal all conflicts must be resolved in favor of the prevailing party, and all legitimate and reasonable inferences indulged in to uphold the finding if possible. When a finding is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 571.) We accord great deference to the City's discretion, and its decision will be affirmed unless we find a prejudicial abuse of discretion. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

I. The City Did Not Abuse Its Discretion in Conducting a Sole Source Sale Rather than Holding a Public Auction

APM contends that the City conducted a sole source sale to LAWPM under circumstances which were not appropriate for such a sale. It argues that Los Angeles Administrative Code section 7.27 is intended only to "enable[] a private sale for smaller, substandard parcels, not multi-million dollar real estate developments in high-demand areas."² APM is mistaken.

Section 7.27 provides: "The Council may determine that the public interest or necessity require the sale, conveyance or exchange of real property owned by the City or any department thereof, or the quitclaiming by the City or by any department thereof, of any interest in real property without notice of sale or

² All further statutory references are to the Los Angeles Administrative Code unless indicated otherwise.

advertisement for bids. In the event of such determination the Council may, by ordinance adopted by the vote of at least two-thirds of all of its members authorize the execution of such deed, contract or other instrument as may be necessary to effect such sale, conveyance, exchange or quitclaim at and for a price or consideration and upon the terms and conditions to be specified in such ordinance provided, however, that such ordinance shall be subject to the provisions of Section 281 of the City Charter.”³

Section 7.27 does not define the circumstances under which the City Council is permitted to determine that the public interest or necessity require the sale of real property without notice of sale or advertisement for bids. It simply authorizes the City Council to do so. As such, the issue of whether the City Council erred in doing so in this case does not involve interpretation of section 7.27. Instead, we consider whether the City Council abused its broad discretion in determining that a sole source sale was appropriate, bearing in mind that the City’s interpretation of section 7.27 and its decision thereunder are given considerable deference.

APM’s argument that section 7.27 is intended to apply only to substandard parcels of property is not supported by the language of section 7.27, nor by the fact that most sales of City-owned property are conducted by public sale. The situation involved here was unique, and the administrative record supports the City’s determination that a sole source sale was appropriate. APM insists that it “would have bid at least \$2 million more on the same terms as those offered to LAWPM,” but this property was unique because it was encumbered by the long-term lease held by LAWPM. The City Council’s decision did not involve a simple calculus

³ Section 281 of the City Charter sets forth the powers and duties of the City Clerk; for example, serving as the custodian of City ordinances and other documents, making such documents available for public inspection, and keeping records of the proceedings of the City Council.

that LAWPM agreed to pay \$18 million and APM offered \$20 million. As APM admitted at trial, there would first have to be a buyout of the lease, either by the City or a proposed third party buyer. Counsel for APM characterized it as an easy thing to do: “[I]t would have been easy to buy out the lease, renegotiate, as you point out, and to then offer to the public you then get an unencumbered piece of property and offer it for true fair market value.” However, as counsel for LAWPM stated at trial, the leasehold estate held by LAWPM was valued at about \$37 million, as opposed to the \$14 million value of the encumbered fee estate interest held by the City. “It is all well and good for plaintiff to try to imagine what it would do, that it could eliminate the lease, but my client [LAWPM] had an extraordinarily valuable asset, and it wasn’t giving it away.” LAWPM had spent 20 years and many millions of dollars developing this property, acting in partnership with the City to accomplish the common goal of creating a thriving wholesale produce market. It could not simply be brushed aside in order to remove the encumbrance on the property. APM does not even attempt to demonstrate what it would have offered or been able to negotiate with LAWPM to make it worthwhile for the latter to renegotiate its lease and step aside as a potential buyer.

As the City points out, the considerable value to the City of the produce use restriction must also be taken into account. As part of the sale, LAWPM agreed to substantially extend the duration of the produce use restriction. Under the lease, the covenant restricting the use ended in 2010, and although disincentives were built into the lease in the form of increased rental payments for nonproduce use, the terms of the sale significantly strengthened the disincentives for changing to nonproduce use. By conducting a sole source sale to LAWPM, the City was able to directly negotiate the terms of the restriction, and LAWPM was highly motivated by its desire to own the property in fee simple to agree to highly

restrictive terms. It would not have been motivated to agree to such restrictive terms were another buyer to step in.

II. The Primary Goal of the Ordinance Was Accomplished

APM further contends that the ordinance contains no language which requires LAWPM or its successors to continue the produce market use for any length of time and in fact allows for an immediate change of use, and as such, on the face of the ordinance, the City's primary goal was not accomplished. This is simply an inaccurate and misleading characterization of the language of the ordinance and the terms of the sale.

The ordinance provides that if LAWPM desires to change to a nonproduce use prior to 2048, it must seek approval and agreement from the City that produce use is infeasible, and it would then pay the City additional compensation according to an agreed-upon schedule, up to \$20 million. If produce use was determined to still be feasible, LAWPM could cease produce use, but only upon payment to the City of a penalty, i.e., the difference between the fair market value of the property at that time and the \$18 million purchase price. Finally, the City holds a power of termination as to LAWPM's or its successors' fee simple estate in the event the use of the property changes without City approval. Thus, while LAWPM could change to a nonproduce use, the extreme financial disincentives to doing so make it highly unlikely that LAWPM would opt to change to a nonproduce use. The primary goal of maintaining and lengthening the restriction to produce use was indeed accomplished by the ordinance passed by the City Council.

III. The City Complied with the Administrative Code and First Determined the Fair Market Value of Its Interest in the Property

APM also contends that the City did not comply with its ministerial duties under section 7.22 by failing to get an appraisal of the fair market value of the property before it determined the buyer. Again, APM is mistaken.

Section 7.22 provides: “Before the Council determines that real property proposed for sale is no longer required for the use of the City and that the public interest or necessity require its sale, the proposed sale shall be considered as follows: [¶] (a) The Department of General Services shall determine whether the City owns a salable interest in the real property, shall appraise said real property at its fair market value; and shall recommend a minimum sale price to the Council. [¶] . . . [¶] (d) In cases involving the direct sale of the City-owned property, the City Administrative Officer shall review the proposed direct sale and recommend to the Council upon its propriety.”

At the City’s behest, Mason & Mason appraised the fair market value of the City’s leased fee interest at \$9,867,000 as of December 1998. Mason & Mason provided an updated appraisal in April 2001 that appraised the City’s leased fee interest to be \$11,293,000.

Thereafter, in January 2002, the City Council determined by unanimous vote that the property would be sold by sole source sale to LAWPM, and directed the Department of General Services and the City Administrative Officer to update the appraisal, as nine months had passed since the last appraisal was done. The April 2001 appraised fair market value of \$11.3 million was determined to be the minimum sale price, to be used as a starting point for negotiations. The third appraisal indicated the fair market value of the leased fee interest was \$14,370,000

as of April 1, 2002.⁴ The City, of course, sold the property to LAWPM for almost \$4 million more than that.

APM's apparent complaint is that there was a divergence of opinions as to the value of the City's salable interest, and purported difficulty in determining the value. The divergence of opinions is largely accounted for by the passage of time: as time passed (from 1998 to 2002) the appraised value increased. This is simply to be expected. APM asserts that the only appraisal that complied with the requirements of section 7.22 was the April 1, 2002 appraisal, obtained after the sole source sale was ordered in January 2002. The two prior appraisals were entirely adequate, and on the basis of the second one a minimum sale price of \$11.3 million was set. There was no failure to comply with the dictates of section 7.22. The City ordered the third appraisal because nine months had passed; its decision to order this third appraisal was entirely rational.

APM also asserts that the fair market value used by the City was too low. But this assertion is based on APM's insistence on ignoring that the City's salable interest was only as to the leased fee interest and not the value of the property as if unencumbered. APM repeatedly relies on the Studley letter to argue that the true fair market value range was \$29.7 to \$42 million. This valuation, however, was essentially useless. It entirely disregarded the produce use restriction *required* by the City in favor of determining the absolute maximum value for the property as if unoccupied, undeveloped, and unencumbered. It took the existence and value of the long-term lease out of the equation, even while assuming that LAWPM was going to be the buyer. The fair market value range expressed therein bore no resemblance to the City's actual salable interest.

⁴ LAWPM also submitted appraisals prepared by C.B. Richard Ellis, valuing the City's leased fee interest at \$8.9 million initially, and later at \$10.3 million as of early 2003.

DISPOSITION

The judgment is affirmed.

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CURRY, J.

We concur:

EPSTEIN, P.J.

HASTINGS, J.